

[\*Lull v. Duke Power Co.\*](#), 88-ERA-16 (Sec'y Feb. 27, 1990)

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U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20210

DATE: February 27, 1990  
CASE NO. 88-ERA-00016

IN THE MATTER OF

GARY LULL,  
COMPLAINANT,

V.

DUKE POWER COMPANY,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SHOW CAUSE

Respondent has complied with my order of August 23, 1989, and has submitted a copy of the Settlement Agreement and General Release of claims (Settlement Agreement) entered into by the parties in this case,<sup>1</sup> which arises under the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982).

The terms of the Settlement Agreement encompass matters arising under various laws, only one of which is the ERA. *See* page 1, first paragraph. My authority over settlement agreements is limited to matters arising under statutes which are within my jurisdiction. *See Polizzi v. Gibbs & Hill*, Case No. 87-ERA-38, Sec. Order, July 18, 1989, slip op. at 7 (Order appended); *Egenreider v. Metropolitan Edison Company*, Case No. 85-ERA-23, Sec. Order Approving Settlement, April 11, 1988. Accordingly, I have limited my review of the Settlement Agreement to determining whether its terms and conditions are a fair, adequate and reasonable settlement of Complainant's ERA claim against Respondent. Except as described below I find the provisions of the Settlement Agreement to be fair, adequate and reasonable.

In the Settlement Agreement, at #4, Complainant "agrees that he will not participate in any action of any kind by any present or former employee of Duke Power, and will not testify or

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otherwise provide evidence in any investigation, hearing, or trial of any such action, except under subpoena." This provision, among other things, prohibits Complainant from voluntarily cooperating with or assisting any state or federal agency, including the Department of Labor and the Nuclear Regulatory Commission, in the investigation and prosecution of federal or other laws. I held in *Polizzi*, slip op. at 5-8, that provisions which have the effect of restricting the administration and enforcement of law are against public policy. Accordingly, and for the reasons set forth in *Polizzi*, I find that the quoted language of the instant Settlement Agreement is void and thus unenforceable.

There is nothing in the Settlement Agreement or elsewhere in the record which enables me to determine whether Respondent, the party in whose favor the void provision runs, intended to agree to the other provisions of the settlement, if the provision, which I have found to be void, is severed. Accordingly, the Respondent is ORDERED to show cause, within 30 days of receipt of this order, why the provision of the Settlement Agreement which is void should not be severed and the remainder of the agreement approved, and the case be dismissed with prejudice. *See* Settlement Agreement at #2.

SO ORDERED.

ELIZABETH DOLE  
Secretary of Labor

Washington, D.C.

**[ENDNOTES]**

<sup>1</sup> Complainant's attorney advised that she had contacted Complainant but that Complainant did not authorize the filing of "a response on his behalf in this matter at this time." Letter of October 6, 1989, from Susan M. Lebold to the Secretary of Labor.